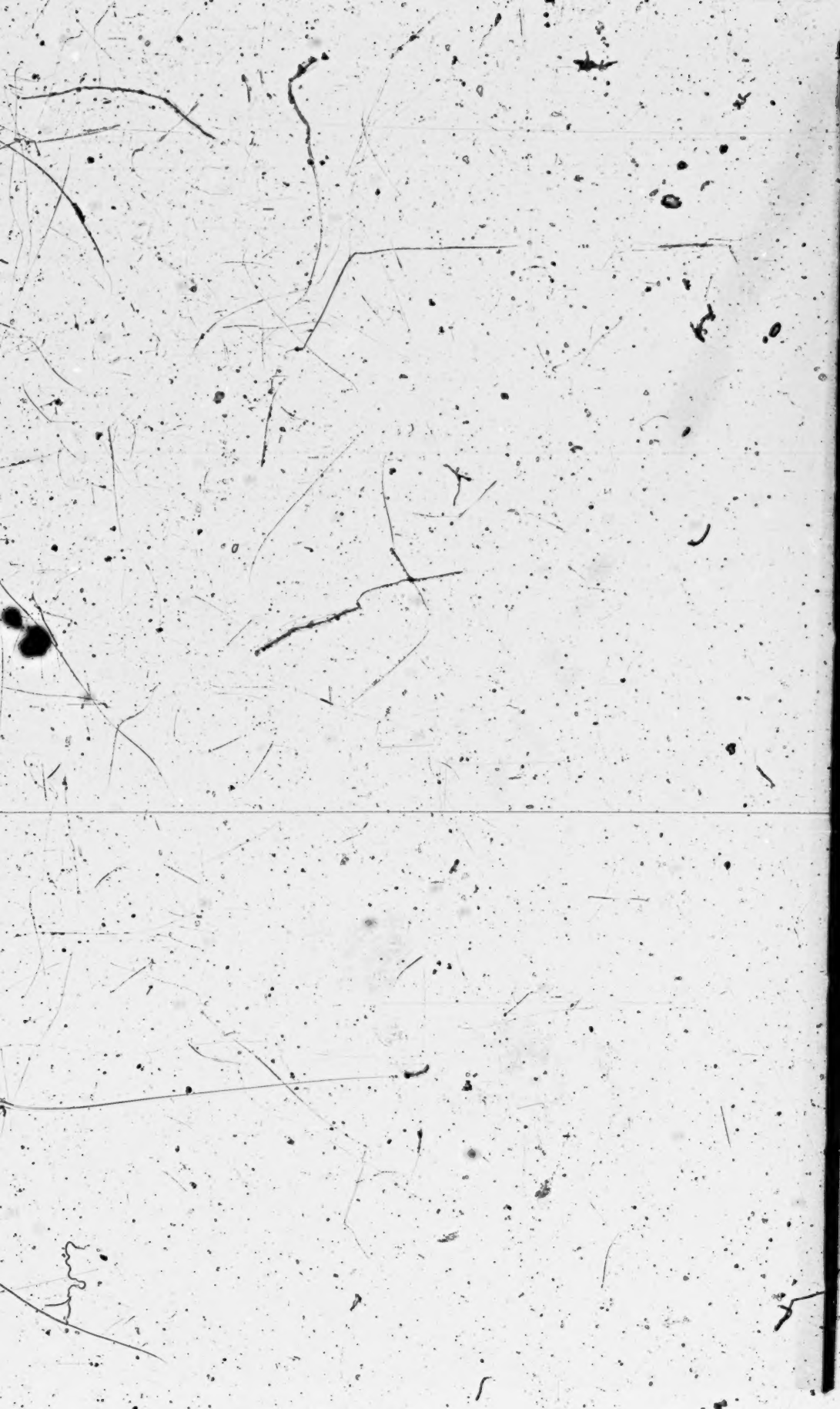

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

Nos. 366-367.

BAY RIDGE OPERATING CO., INC., *Petitioner*,

v.

JAMES AARON, ET AL., *Respondents*.

HURON STEVEDORING CORP., *Petitioner*,

v.

LEO BLUE, ET AL., *Respondents*.

MOTION FOR LEAVE TO FILE AND BRIEF OF THE WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST AS AMICUS CURIAE.

WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST

By GREGORY A. HARRISON
111 Sutter Street
San Francisco, California

WILLIAM RADNER
MARY L. SCHLEIFER
1405 K Street, N. W.
Washington, D. C.
Its Attorneys

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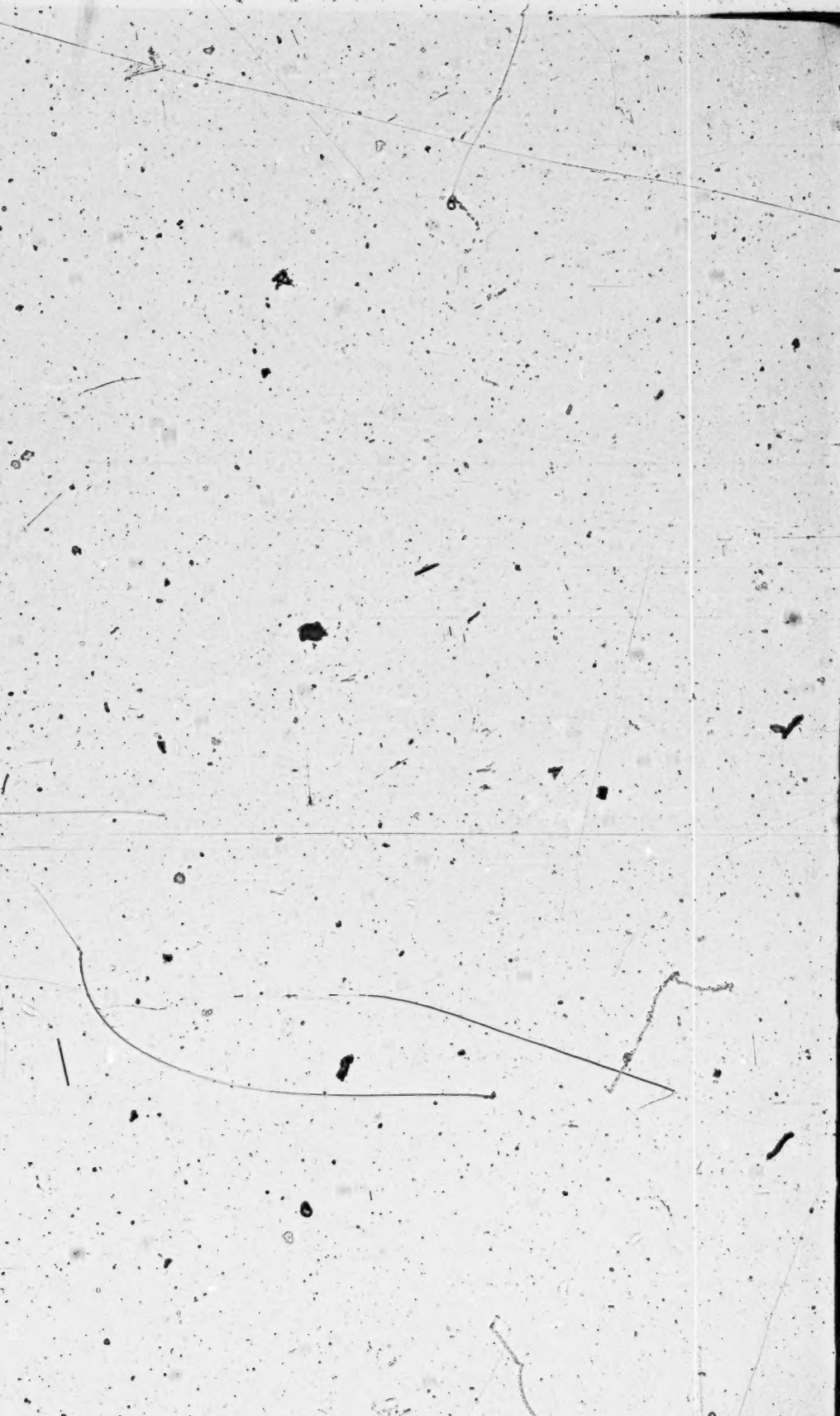

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MOTION OF THE WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

The undersigned, as attorneys for Waterfront Employers Association of the Pacific Coast, respectfully move this Honorable Court for permission to file the attached brief on behalf of the Waterfront Employers Association of the Pacific Coast as Amicus Curiae in support of petitioners' position in the above-entitled cases.

Counsel for petitioners herein has consented to the filing of this brief. Counsel for the respondents has refused to grant consent.

Waterfront Employers Association of the Pacific Coast, referred to herein as the Employer Association, is a non-

profit corporation formed and existing under the laws of the State of California, representing its members in matters of collective bargaining with labor organizations acting for longshoremen and other shoreside workers in the shipping industry on the Pacific Coast and, as such, is party to numerous labor contracts containing provisions concerning wages and hours similar to those involved in the above entitled cases.

Sixty-three suits are pending in the United States District Courts in and for the Districts of Washington, Oregon, Northern California and Southern California on behalf of about 1400 claimants against members of the Employer Association in which contentions are made similar to those made by respondents in said cases now pending in this Court, and decision of which will turn upon questions of law to be determined herein by this Court.

The Employer Association on behalf of its members is party to labor agreements affecting some one hundred fifty employers and twenty thousand workers on the Pacific Coast by the terms of which agreements either party may cancel, should the contentions of law made by respondents herein be upheld.

This motion is based upon the foregoing grounds and the additional matters set forth in the accompanying brief.

Respectfully submitted,

WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST

By GREGORY A. HARRISON
111 Sutter Street,
San Francisco, California

WILLIAM RADNER
MARY L. SCHLEIFER
1405 K Street, N. W.
Washington, D. C.
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BRIEF OF THE WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST AS AMICUS CURIAE.

The reasons for filing this brief appearing in the motion for leave to file will not be repeated.

PRELIMINARY STATEMENT.

Waterfront Employers Association of the Pacific Coast[1] has a membership of firms engaged in the steamship, terminal or stevedoring business on the Pacific Coast of continental United States which are the employers of

[1] As stated in the motion annexed, Waterfront Employers Association of the Pacific Coast is a non-profit corporation, formed and maintained under the laws of the State of California and is referred to herein as the Employer Association.

nearly all longshoremen and other shoreside workers employed in shipping and terminal facilities on that coast, numbering approximately twenty thousand.

For many years past the Employer Association and its predecessors have represented members in the negotiation, execution and administration of collective bargaining contracts with labor organizations representing longshoremen and workers in related activities and is now party in such capacity to about twenty-one collective bargaining agreements.

The International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, as collective bargaining representative of workers, is party to eighteen such agreements. International Longshoremen's Association, affiliated with the American Federation of Labor, as collective bargaining representative of other groups of workers is party to three such contracts.

As in the Port of New York, waterfront employers on the Pacific Coast have paid wages in compliance with contract provisions on the assumption that overtime rates of pay under the contracts were time and one-half the "regular" rates of pay required by Section 7(a) of the Fair Labor Standards Act.

In the years 1945-1946, numerous suits were filed in United States District Courts on the Pacific Coast against members of the Employer Association. Those pending in the Northern District of California have been tried and are now pending on briefs prior to submission. The others await trial. In all these cases, the theory of plaintiffs is that advanced herein and upheld by the decision of the Circuit Court of Appeals for the Second Circuit, to wit, that overtime rates paid in this industry for work performed outside of the normal workday and workweek established by contract are "regular" rates of pay within the meaning of Section 7(a) of the Fair Labor Standards Act.

If this Court shall affirm the decision of the Circuit Court of Appeals, members of the Employer Association will be threatened with innumerable other claims of like character in amounts impossible to foretell.

SUMMARY OF FACTS.

The facts in these cases are fully set forth in the petitioners' brief. In the interests of brevity only a few basic facts are set forth herein.

The collective bargaining agreements in the stevedoring industry, as in many other industries, establish a "basic" workday and workweek during which a specified rate is paid. All other time is designated "overtime" and is payable at time and one-half the rate payable for the "basic" workday and workweek. In normal peace times, a vast majority of longshore work is performed during the "basic" workday and workweek although some work is performed from time to time in "overtime" hours; the amount of "overtime" having been considerably higher during the war period. As in other industries, employers and unions alike have always intended and considered the rates payable for the "basic" workday and workweek to be the "regular rate" of pay within the meaning of the Fair Labor Standards Act and have credited contract "overtime" against their statutory obligation. The respondents contend, and the Circuit Court of Appeals has held, that contract "overtime" rates in this industry are part of "regular rate", within the meaning of the Fair Labor Standards Act, even though the result of bona fide collective bargaining and with no intent to evade the statutory obligation.

SUMMARY OF ARGUMENT.

I. The Circuit Court of Appeals erred in holding this Court has determined that except under the limited circumstances present in the *Belo* case, the parties cannot by collective bargaining agreement fix the "regular rate" of pay, within the meaning of the Fair Labor Standards

Act. This Court has not heretofore considered the precise issues before the Circuit Court of Appeals but, contrary to the opinion of the Circuit Court of Appeals, it has consistently reaffirmed the principle that the fullest possible scope should be given to collective bargaining agreements except where they constitute mere artifices or subterfuges to evade the law. Moreover, this conclusion is required by the intent of Congress as expressed in the legislative history of the Fair Labor Standards Act, by the Portal-to-Portal Act of 1947, and by our national policy.

II. The Circuit Court of Appeals erred in holding that contractual overtime rates in the stevedoring industry constitute "regular" rates of pay, within the meaning of the Fair Labor Standards Act. "Regular rate" within the meaning of the Fair Labor Standards Act was not intended to include contractual overtime designed to prevent work outside the normal workday and workweek established by collective bargaining agreements. This is so even though contractual overtime is paid without regard to the forty hour limitation in the Fair Labor Standards Act and that it may not fully achieve its purpose to prevent such work. In the stevedoring industry the time and one-half rates payable for work outside the established workday and workweek have always been considered and intended as such true punitive overtime and not regular rates. Further, they have achieved in large measure confinement of work to the regular hours established by the contract.

III. If the intent of Congress is doubtful, the doubt should be resolved in favor of petitioners since a contrary decision would threaten the foundation of collective bargaining, expose industry to ruinous claims and otherwise create serious injustice and inequity.

ARGUMENT.

I. The Circuit Court of Appeals Erred in Holding this Court Has Determined that Except Under the Limited Circumstances Present in the Belo Case, the Parties Cannot by Collective Bargaining Agreement Fix the "Regular Rate" of Pay Within the Meaning of the Fair Labor Standards Act.

The decision of the Circuit Court of Appeals is based upon the assumption that under the decisions of this Court the collective bargaining agreements before it were entitled to no weight whatever in determining "regular rate" under Section 7(a) of the Fair Labor Standards Act. It held that the contrary doctrine declared in the *Belo* case[2] was restricted to a contract for a guaranteed weekly wage with stipulated hourly regular and overtime rates.

The Court below apparently also held that a decision of this Court[3] established that "the statutory test of regularity is met where a single principle or rule is uniformly applied in order to obtain the rate."

This Court has recently reaffirmed the doctrine of the *Belo* case (*Walling* v. *Halliburton Oil Well Cementing Co.*, 331 U. S. 17) and, contrary to the assertion contained in the Circuit Court's opinion, that doctrine was not limited to contracts providing a guaranteed weekly wage.

In the *Belo* case (p. 631) this Court stated: *"But it is agreed that as a matter of law employer and employee may establish the 'regular rate' by contract."*

Again it said:

> "Where the question is as close as this one, it is well to follow the Congressional lead and to afford the fullest possible scope to agreements among the individuals who are actually affected. This policy is based upon a common sense recognition of the special problems confronting employer and employee in businesses

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[2] *Walling* v. *Belo Corp.*, 316 U. S. 624.

[3] *Overnight Motor Transportation Co.* v. *Missel*, 316 U. S. 572.

> where the work hours fluctuate from week to week and from day to day." (p. 635)

It is not suggested that the labor contracts involved here are unrealistic or artificial (*Walling* v. *Helmerich & Payne, Inc.*, 325 U. S. 37). There is no claim that they are intended to, or do, negate the statutory purpose. These contracts do not establish rates that are illusory because never paid as in *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419, and the contracts are not of a character which are instruments for evasion of the law, *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427.

In rejecting the collective bargaining agreements of the parties the Court below has not only departed from the decisions of this Court but also from the Congressional intent in the Fair Labor Standards Act. As the District Judge found "The inevitable consequence of such a rule [as the plaintiffs urge] would be severely to restrict the scope of collective bargaining . . ." (R. 586) The Congressional intent in the Fair Labor Standards Act is expressed in the report of the House Committee[4] which stated:

> *"The bill is intended to aid and not supplant the efforts of American workers to improve their position by self-organization and collective bargaining."*

The report of the Senate Committee[5] also stated:

> "It is not intended that this law shall invade the right of employer and employee to fix their own contracts of employment wherever there can be any real, genuine bargaining between them."

and Chairman Norton who reported the bill in the Special Session explained:

> "It is intended to protect employees who are not protected by collective bargaining."[6]

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[4] H. Rep. 1452, 75th Cong., 1st Sess., Aug. 6, 1937.

[5] Sen. Rep. 884, 75th Cong., 1st Sess., July 6, 1937.

[6] 82 Cong. Rec., p. 1990.

This Congressional intent was reemphasized in the Portal-to-Portal Act of 1947 (P. L. 49, 80th Congress; May 14, 1947) which states in the Findings and Policy that the Fair Labor Standards Act "has been judicially interpreted in disregard of long established customs, practices, and contracts between employers and employees" and if so interpreted "voluntary collective bargaining would be interfered with and industrial disputes . . . would be created" and that, "*it is hereby declared to be the policy of Congress . . . (2) to protect the right of collective bargaining.*" The national policy of encouraging the collective bargaining process has also been recently reaffirmed in the Labor-Management Relations Act, 1947 (P. L. 101, 80th Congress, June 23, 1947).

The Court below in disregarding the collective bargaining agreements of the parties and the conditions and practices in the industry, and imposing a single rigid rule apart from agreement to determine regular rates of pay has clearly departed from the repeated statements of this Court that it was not the purpose of Congress in enacting the Fair Labor Standards Act to impose upon the almost infinite variety of employment situations a single rigid form of wage agreement. *Walling* v. *Belo Corp.*, supra, and *149 Madison Avenue* v. *Asselta*, 331 U. S. 199.

It is respectfully submitted that the judgment of the Circuit Court should be reversed and the decision of the District Court reinstated to the end that collective bargaining contracts between employers and employees entered into in good faith without taint of intent to evade the law shall be upheld as establishing the "regular rate" of pay in accordance with the declaration by this Court that:

> "*When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it . . .*"[7]

[7] *Walling* v. *Belo Corp.*, supra, p. 635.

II. The Circuit Court of Appeals Erred in Holding that Contractual Overtime Rates in the Stevedoring Industry Constitute Regular Rates of Pay, Within the Meaning of the Fair Labor Standards Act.

The basic issues in these cases are (1) whether overtime paid in accordance with union agreements for work outside the workday and workweek established as normal or regular by the agreements and paid without regard to whether such overtime is worked before or after forty hours a week is to be excluded from "regular rate", as that term is used in the Fair Labor Standards Act and (2) whether overtime rates in the stevedoring industry are to be so excluded. We think both questions must be answered in the affirmative.

(a) By every test it is clear that Congress did not intend the term "regular rate" to include contract overtime.

The legislative history of the Fair Labor Standards Act reveals there was no discussion of the term "regular rate" by the Congress. This lack of discussion clearly demonstrates that Congress intended "regular rate" to be used in its ordinary accepted meaning. Moreover, this is a fundamental rule of statutory construction where Congress fails to define the terms of a statute. *Old Colony Railroad Company* v. *Commissioner of Internal Revenue*, 284 U. S. 552. See also, *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607.

In ordinary accepted meaning, the terms "regular rate" or "basic rate"[8] are distinguishable from and do not in-

[8] The Eight-Hour Law of 1912, as amended (37 Stat. 137, 54 Stat, 884; 40 U. S. C. A. 324 et seq.) as well as the Walsh-Healey Act (49 Stat. 2036; 56 Stat. 277; 41 U. S. C. A. 35 et seq.), as supplemented by Regulations of the Secretary of Labor, require time and one-half the "basic rate". The terms "regular rate" and "basic rate" have always been treated as synonomous. All stevedores who have contracts with the Government are required to pay time and one-half the "basic rate" for all work in excess of eight hours per day by reason of the Eight-Hour Law. This requirement has been considered satisfied by payment at contract overtime rates. There is no doubt that if the decision of the Circuit Court of Appeals is sustained, additional liabilities will be created under the Eight-Hour Law and the Walsh-Healey Act.

clude "overtime". This Court has so recognized by defining regular rate as the "hourly rate actually paid for the normal, non-overtime workweek." *Walling* v. *Helmerich & Payne*, 323 U. S. 37, 40, or, as "all payments . . . received regularly during the workweek, exclusive of overtime payments." *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419, 424. See also *Overnight Motor Transportation Co.* v. *Missel*, 316 U. S. 572; *United States* v. *Rosenwasser*, 323 U. S. 360; *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427.

Trade union agreements for more than a century have used the device of imposing an economic penalty of higher rates for "overtime" as a means of channeling the work into acceptable daily and weekly patterns as fixed by contract. The purpose of the unions in the penalty overtime device was to achieve a shorter workday and workweek in the interests primarily of health, efficiency and to spread employment. That this was their objective rather than securing increased pay, by working certain hours at "regular" time and additional hours at "overtime", is well established. Not only did Professors Taft and McCabe so testify at the hearings (R. 327-330, 338, 346-348, 419, 422-423) but these conclusions are supported by quotations from eminent authorities in this field which have been reproduced in Appendix A (p. 24) attached to this brief. That the purpose of the trade unions was not to secure increased pay is further established by the fact, of which this Court may take judicial notice, that except in periods of temporary emergency or war periods, the actual hours of daily and weekly employment have steadily declined in this country over the last century.[9]

The purposes of labor unions in imposing an economic penalty for daily and weekly overtime are identical with the purposes sought to be achieved by the Fair Labor Standards Act. Indeed organized labors' drive for shorter

[9] See also the table in Appendix B (p. 28) showing the decrease in the weekly hours of employment in manufacturing since 1909.

working hours was concurrently pressed by means of trade union agreements and legislation.[10] This legislative program culminated in the Fair Labor Standards Act which was intended to protect workers not covered by trade union agreements. Since the overtime requirements of the fair Labor Standards Act were intended to complement contract provisions serving an identical purpose, it also follows that 'regular rate" in the Fair Labor Standards Act was not intended to include contract overtime.

The Administrator, Wage and Hour Division, has always recognized that the statutory requirements are met by contractual provisions requiring overtime without regard to whether paid for work before or after forty hours of work. Interpretative Bulletin No. 4 of the Wage and Hour Division has consistently stated that contractual daily or weekly overtime may be credited against overtime payments due under the Fair Labor Standards Act.

The test of overtime, as distinguished from a shift differential, incentive payment or other type of "regular rate", is purpose—i.e. is it intended to prevent work outside or beyond the regular workday or workweek established by union contract. Whether required by law or contract overtime is permissive in nature, not prohibitive. Thus in dealing with the Oregon 10-hour statute this Court said:

> "The provision for overtime is permissive, in the same sense that any penalty may be said to be permissive. Its purpose is to deter by its burden and its adequacy for this was a matter of legislative judgment under the particular circumstances. It may not achieve its end, but its insufficiency cannot change its character from penalty to permission."[11]

---

[10] See, *Shorter Hours*, Marion C. Cahill, Columbia University Press, 1932.

[11] *Bunting* v. *Oregon*, 243 U. S. 426, 436-437.

Labor unions might have prohibited all work beyond the established workday or workweek in their drive for shorter hours but this was considered economically undesirable; the employer was to be permitted to exceed the established pattern when the exigencies of his business required it, provided only that he then compensated his employees at extra rates for the added burden. This is likewise true of the Fair Labor Standards Act (*Overnight Motor Transportation Co.* v. *Missel*, supra, p. 578). The permissive character of overtime and this Court's decision in *Bunting* v. *Oregon* thus reject any test whereby "overtime" is limited to cases where it is fully effective in preventing work outside the established pattern. "*. . . Its insufficiency cannot change its character from penalty to permission*". *Bunting* v. *Oregon*, supra. Again this Court may take judicial notice that some overtime occurs at some times in all industries; the difference between industries is only one of degree. The adoption of any such test will accordingly affect all industries having such collective bargaining agreement at least for some periods.

Equally untenable is the contention that overtime must be limited to hours in excess of a given number. Obviously overtime paid for particular days, such as Sundays or holidays, is not overtime by reason of constituting work in excess of any particular number of preceding hours. Moreover, for many years many industries have considered as overtime all work performed before or after certain hours of the day without regard to whether a particular employee did any work during the regular hours on the same day. In Appendix C (p. 29) attached to this brief, we have collected citations from a number of published contracts in other industries for many years long antedating the Fair Labor Standards Act which like the stevedoring industry make overtime payable for all work outside designated hours.

Professors Taft and McCabe testified that agreements requiring overtime for any work outside specified clock

hours were generally prevalent in union contracts in the building, printing and metal trades and in scattered contracts in other industries covering cement and asphalt workers, stereotypers, brewery workers, automobile workers, retail delivery drivers, and boot and shoe, leather and furniture workers (R. 331, 339, 425-426).

More recently the Bureau of Labor Statistics[12] has stated that such contracts exist in the non-ferrous metal, automobile, canning and preserving, cotton textile, men's clothing, shipbuilding, tobacco, and trucking industries, as well as in the stevedoring industry.

It is accordingly clear that throughout industry generally, the term "overtime" was used in contradistinction to "regular" and employed for the purpose of preventing to the greatest extent practicable, all work outside the regular workday and workweek established by contract.

(b) In the stevedoring industry, management, labor and the public alike have always considered the approximately time and one-half rate payable for night, Saturday, Sunday and holiday work to be an overtime rate and not part of regular rate.

Although the Circuit Court of Appeals referred to a change in terminology in the longshore contract in New York in 1938 from "all other time" to "overtime", an analysis of the contracts preceding 1938 will establish, as the Attorney General will undoubtedly show, that the terms "all other time" and "overtime" were used interchangeably in the New York contracts prior to 1938. Thus the time and one-half rate in New York was generally considered, by employers and the unions to be an overtime rate. The public press showed a like understanding in newspaper and trade journal accounts concerning negotiations between the International Longshoremen's Association and the New York Shipping Association in the years 1918-1936, some of which have been reproduced

[12] Monthly Labor Review, Oct. 1947, *Premium Pay Provisions in Union Agreements*, p. 424.

in Appendix D (p. 32) attached to this brief. In these articles, it is also clear that the public understood the "straight time" contract rates to be regular rates, for the term "regular rate" is generally used.

From the earliest longshore union contracts to 1934 on the Pacific Coast and to the present on the Gulf Coast, the contracts between the unions and employers have followed the pattern of wages and hours prevailing in the New York harbor; that is to say, work was carried on on the basis of a stated clock hour day with straight time rates applicable to such hours and overtime rates, approximately 50 per cent higher, applicable to all other hours. Such other hours have always been designated as "overtime" in the Pacific and Gulf Coast agreements. Thus the contract of the Riggers and Stevedores Union applicable in San Francisco in 1911 provides:

> "1. Nine hours' work performed between the hours of 7 A.M. and 5 P.M. shall constitute a day's work.
>
> "2. All work performed between the hours of 5 P.M. and 7 A.M., on Sundays, or on State and National Holidays, shall be considered overtime."

The same wording with minor variations continued to be used in each contract until 1934.[13]

At the conclusion of a maritime strike on the Pacific Coast in 1934, all disputes of the longshoremen and their employers were submitted to arbitration before the

---

[13] The contracts in New Orleans and Gulf ports always used the term "overtime" following the award of the National Adjustment Commission for New Orleans, dated November 2, 1918, which provided:

> "First: The basic working day of eight (8) hours from 7 A.M. to 12 o'clock noon, and from 1 P.M. to 4 P.M. is hereby established.
>
> "Second: On general cargo men shall receive sixty-five cents (65c) an hour for *regular* time on all week days and all other time shall be counted and paid for as overtime at the rate of one-dollar ($1.00) per hour." (Emphasis supplied)

National Longshoremen's Board appointed by the President of the United States to hear and determine the strike issues. That Board rendered its award on October 11, 1934, and among other things ordered the parties to adopt a workday and workweek as follows:

> "*Section 2.* Six hours shall constitute a day's work. Thirty hours shall constitute a week's work, averaged over a period of four weeks. The first six hours worked between the hours of 8 A.M. and 5 P.M. shall be designated as straight time. All work in excess of six hours between the hours of 8 A.M. and 5 P.M., and all work during meal time and between 5 P.M. and 8 A.M. on week days and from 5 P.M. on Saturday to 8 A.M. on Monday, and all work on legal holidays, shall be designated as overtime. • • •"

In the hearings before the National Longshoremen's Board representatives of the International Longshoremen's Association, then representing the workers, clearly admitted the punitive character and purpose of overtime in the stevedoring industry as did Mr Ryan, President of the International Longshoremen's Association, when testifying in these cases (R. 173, 180, 186). The International Longshoremen's Association further urged the adoption of the six-hour day and thirty hour week, in exactly the form adopted by the Board, for the avowed and specific purpose of spreading the available employment among the workers, alleged to be excessive in number.[14] At the same time a wage increase was granted by the Board to assure adequate earnings by reason of the reduction in the workday and workweek.

Despite contrary assurances by the International Longshoremen's Association and the increased rate intended to compensate for the shorter six-hour day, immediately following the award the longshoremen refused to be displaced by fresh men at 3 P.M., or at the conclusion of six hours

[14] Relevant excerpts from the testimony are reproduced in Appendix E (p. 35).

straight time work, if there was further work to be done. Thus the employers were compelled either to work only a six-hour day or to employ the men at overtime rates. Since all trucking and other services incidental to longshore work remained on an eight-hour day on the Pacific Coast, steamship companies found it impracticable and uneconomical to limit their activities to the six-hour day. The employers being unable to secure reliefs at 3 P.M. to continue work at straight time rates, in 1937, following a second strike, finally acceded to the actuality and the provision was inserted in contracts thereafter: "but there shall be no relief of gangs before 5 P.M."

In 1938, the National Labor Relations Board certified the International Longshoremen's and Warehousemen's Union as collective bargaining representative for a unit comprising all employers of longshoremen on the Pacific Coast, except in a few minor ports on Puget Sound. The six-hour day and the provision above quoted have since that date been incorporated in all longshore and dock workers contracts on the Pacific Coast except where the eight-hour day prevails.[15]

Thus we find that in the stevedoring industry on the Pacific Coast the same conception of contract overtime prevailed until 1934 as that which existed in New York. Since then, the only departure from the pattern of hours and rates of pay prevailing in New York arose out of the award imposed by Presidential Board upon employers on the Pacific Coast, which being identical in purpose with that underlying the Fair Labor Standards Act, simply reduced the length of the workday, thus imposing upon the em-

[15] A majority of the suits filed on the Pacific Coast involve walking bosses who, while not covered by a collective bargaining agreement, have always been paid for straight and overtime work strictly in accord with the longshore contract, except for an added differential, and accordingly have enjoyed the benefits of the six-hour day since 1934. The balance of the suits involve terminal workers employed under a contract with the International Longshoremen's and Warehousemen's Union which in all material respects is identical with the New York longshore contracts.

ployers a similar obligation respecting overtime as that which had theretofore prevailed but greater in amount.

And so on the Pacific Coast as on the Atlantic, and as in industry generally, we find all parties in interest imparting to contract rates payable for the basic workday and workweek the same meaning as "regular" rates referred to in the law and treating overtime rates as being in conformity with the requirements of Section 7(a).

It is notable that one of the important segments of organized labor in this industry has affirmed these meanings and purposes in this case and that the International Longshoremen's and Warehousemen's Union has never taken any official position to the contrary.

Finally, the District Judge found, based upon evidence which cannot be challenged as insufficient to support the Findings:

> "The Collective Agreements, since the International Longshoremen's Association organized the longshoremen in the Port of New York in 1916, reflect the desire and purposes of the Union to decasualize employment, to concentrate employment during the basic eight-hour day and to avoid 'overtime', except when absolutely essential." (R. 610-611)

> "The employment of the 50 percent premium for such overtime hours was designed to constitute a deterrent and not a prohibition. Such 50 percent premium in the longshore industry has proved to be effective as a deterrent and is responsible for the high degree of concentration of longshore work in the Port of New York to the basic working day." (R. 612)

III. If the Intent of Congress is Doubtful, the Doubt Should Be Resolved in Favor of the Petitioners Since a Contrary Decision Would Threaten the Foundation of Collective Bargaining, Expose Industry to Ruinous Claims and Otherwise Create Serious Injustice and Inequity.

It is axiomatic that when the intent of Congress is in doubt the Courts will not imply an intention which is contrary to public policy and interest. Many years ago this Court stated in *Wilson* v. *Rousseau*, 4 Howard 646, 680:

> "We cannot but think a court should hesitate before giving a construction to the clause so deeply harsh and unjust in its consequences, both as it respects the public and individual rights and interests, upon so narrow a foundation."

No contrary principle was applied in *Jewel Ridge Coal Corp* v. *Local No. 6167*, 325 U. S. 161, since the Court there found that the Congressional mandate was clear.

Yet the decision of the Circuit Court of Appeals would clearly have this result, as the District Court found:

> "Whatever the answer to such a rhetorical question, it is clear that the application of either of plaintiffs' formulae to the Nation's wage bill retrospectively would create havoc with established labor relations, put collective bargaining in the category of a device for obtaining money under false pretenses and probably strain the resources of a substantial proportion of American industry.
>
> "Such catastrophic results are inevitable once we accept plaintiffs' underlying premise—that in determining the regular rate intended by Congress, we must close our eyes to the contract in good faith negotiated between employer and employees and look only to the actual work pattern. Upon such a premise, genuine collective bargaining cannot live."
>
> "If we are free to reject the contractual 'regular rate' in the case of longshoremen, there is no rational basis for not rejecting it in the three illustrations. The inevitable consequence of such a rule would be severely

to restrict the scope of collective bargaining, to check the development of agreements more favorable to employees than the minimum standards established by F. L. S. A. and to retard the use of overtime even when national interest required it." (R. 586)

Time and again, in the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. A. §§101 et seq.), in the National Labor Relations Act (49 Stat. 449, 29 U. S. C. A. §§161 et seq.), in the Labor-Management Relations Act, 1947 (supra), and the Portal-to-Portal Act of 1947 (supra), Congress has declared the national policy to be one of encouraging the collective bargaining process. This Court itself has recognized that as the policy of the Fair Labor Standards Act, (supra, p. 7) as the legislative history of that Act shows (supra, p. 8). Yet the effect of the decision below would render futile collective bargaining respecting wages and hours, the most important terms of the collective agreement, since the actual rates of pay would in a large measure be fixed by law instead of by contract. Again the decision of the Circuit Court of Appeals would defeat one of the principal objectives of organized labor; that of obtaining uniformity of wage rates for employees performing similar work under similar circumstances. And, by virtue of the penalties which they would face, employers would be deterred from acceding to the long existing objective of organized labor to impose severe penalties for the performance of work at undesirable hours.

The rule announced in the decision of the Circuit Court, if upheld by this Court, will present to the stevedoring industry and others in like circumstances, the immediate need of setting aside collective bargaining agreements and industry practices which have long been in effect and insisting on new formulae to bring wage and hour provisions within the rigid rule set forth therein. The wage penalties threatened would leave no alternative to employers. How workers and unions will respond cannot be certainly known. Obviously, the results will be disturbing to industry, labor

and production. Probably, industrial disputes, controversy and unrest will be serious. And, the effect on commerce must certainly be such as to result in hardship and inconvenience to the public.

The coast longshore agreement for the Pacific (and other shoreside labor contracts), as well as those in the Port of New York, contain specific provision that in the event of a final decision holding the contracts before this Court in non-conformity with the law either party may forthwith cancel, thus recognizing that employers in this industry cannot carry on without drastic changes. Where contracts do not contain such a clause, the problem is only deferred at the expense of employers until contract expiration dates arrive, at which time the impact will fall on commerce and the public.

On the Pacific Coast it is clear that if the decision of the Court below is affirmed, employers must attempt to abolish the six-hour day. It is a matter of common knowledge that in the coal and clothing industries and in many others, workdays of eight hours or less and workweeks of forty hours or less have been established although more or less regularly overtime hours are worked. In such industries also employers will be forced to resist continuance of conditions more favorable to employees than the statute requires, which have been obtained by organized labor through the process of collective bargaining.

It is fair to predict also that if the decision of the Circuit Court of Appeals is sustained, all industries subject to collective bargaining agreements will face retroactive liability in a flood of suits comparable to those which arose under the same law prior to the Portal-to-Portal Act of 1947. One cannot predict the exact extent of the liabilities which industry would face in that event. But, in an industry such as stevedoring where labor costs constitute more than 80 percent of the total operating costs, it is evident that financial ruin would result.

Some notion of the extent of the liabilities involved is indicated by estimates submitted to the Congress indicating that the liability of the Army, Navy and Maritime Commission to reimburse contracting stevedores (for war service only), if the judgment of the court below is sustained, will approximate $300,000,000.[16]

The decision of the Circuit Court of Appeals is particularly unjust in that employers, such as those in the stevedoring industry, would suffer liabilities solely because they have exceeded their legal obligations by adding thereto liability to pay a similar rate for work performed at night and on Saturdays, Sundays and holidays. And on the Pacific Coast the injustice would be even more oppressive since a greater liability would result solely because an award of a Presidential Board, for purposes identical with those of the statute, imposed upon employers a six-hour day instead of an eight and a thirty-hour week instead of forty.

In the Portal-to-Portal Act of 1947, Congress declared the practical policy against interpretations of the law in disregard of long established customs, practices and contracts creating unexpected liabilities, impairing the resources and even threatening the solvency of employers and conferring windfalls on employees in excess of their contract rights. That policy applies with at least equal force in the cases now before this Court and fully supports the conclusion reached by the District Court.

CONCLUSION.

For the foregoing reasons and other reasons set forth in the petitioners' brief the Waterfront Employers Association of the Pacific Coast respectfully urges that the deci-

[16] Hearings before Subcommittee No. 4 of the House Committee on Education and Labor, November 17-25, 1947, verbatim transcript, Bureau of National Affairs, pp. 65, 146, 224.

sion of the Circuit Court of Appeals in this case be set aside and the decision of the District Court be reinstated.

Respectfully submitted,

WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST
By GREGORY A. HARRISON
111 Sutter Street
San Francisco, California

WILLIAM RADNER
MARY L. SCHLEIFER
1405 K Street, N. W.
Washington, D. C.

Its Attorneys.

APPENDIX A.

Excerpts from Authorities Concerning the Establishment and Purposes of Overtime Requirements by Organized Labor.

Sidney and Beatrice Webb in *Industrial Democracy*, written in 1897, pointed out that as early as 1836 the London Engineers after a successful strike secured a 60-hour week and "the penalizing of overtime by extra rates." (p. 340) In a later passage they stated that the agreement for the London building trades made in 1892 "with extra rates intended to penalize overtime, is only one of the latest of a practically unbroken series of collective agreements." (p. 341.)

Professor George E. Barnett, one-time President of the American Economic Association, in his work concerning the Typographical Union, *The Printers*, published in 1909, stated: "The distinctive characteristic of regulations aimed at reducing the length of the working day . . . is the requirement . . . of a considerably higher rate for overtime than for 'time.'" (p. 157). "The aim of the union is to reduce the hours of work and not to get extra pay . . . Although it cannot abolish such work entirely, it aims to make overtime as undesirable to employers as trade conditions will permit." (p. 159).

Professor T. S. Adams and Helen L. Sumner, of the University of Wisconsin, said in their textbook, *Labor Problems*, published in 1905: "Overtime is systematically opposed. One or two unions forbid it, except in cases of emergency, but the usual preventive is found in demanding extra pay for overtime." (p. 260)

In *What's What in the Labor Movement*, compiled by Waldo R. Browne and published in 1921, we find (p. 363):

> "*Overtime.* Time worked beyond the number of hours established by collective bargaining, by custom, or by law as comprising the normal day or week in a particular industry, occupation, or industrial plant, or time worked on Sundays and holidays, is so called.

> The increased rate of pay commonly demanded by organized employees for such extra working time is often known as "punitive overtime," the trade union theory being that it is usually unnecessary and always undesirable to have overtime, and that the increased rate of payment is a penalty against the employer and intended to act as a deterrent."

In *Labor and Social Organization*, written by Richard A. Lester and David A. McCabe, published in 1938:

> "The union method of 'enforcing' observance of the normal day upon employers is to set a higher hourly rate for hours beyond the normal than for the hours up to the normal number. The overtime rate is usually 'time and one half' (150 per cent of the normal rate), with 'double time' (double the normal rate) for the days or half days not included in the normal working week. These are known as 'punitive overtime rates.' They allow the employer to work the men overtime in emergencies but impose a tax to insure that it is an emergency. This practice has led to the charge that in demanding a shorter workday the men are aiming not so much at a reduction in actual hours as at an increase in the daily wages. However, most unions frown upon men working overtime regularly while other members of the union are unemployed. (p. 72)"

William Haber, in *Industrial Relations in the Building Industry*, published in 1930, says (p. 228): "Overtime regulation is of considerable importance in building-trades unions. Most of the organizations provide for overtime rates between one and one-half and two times the regular rate." Discussing the charge that the rates are excessive, he points out (p. 229) that "the unions contend that the rate is intended to be punitive, to discourage overtime, to force an employer to do all the work during the regular eight hours." He adds: "An examination of union policy . . . shows a fundamental purpose behind overtime wage regulations. The union is interested in equalizing the working opportunities of its members. . . . Punitive overtime rates

aim to spread production over a longer period and to equalize the working opportunities among the union members.''

Willard E. Hotchkiss and Henry R. Seager, in *History of the Shipbuilding Labor Adjustment Board 1917-1919*,[1] stated:

> "Compensation at higher rates for overtime is paid as a means of protecting workers against unduly long hours and of penalizing employers who require such hours." (pp. 38-39)

The views of labor leaders were summarized at the turn of the century by the Industrial Commission, which concluded:

> "The general drift of opinion among American trade unionists is strongly in the direction of emphasizing the importance of a shorter work day. The most progressive leaders, such as Mr. Gompers, of the Federation of Labor, are constantly urging their associates to put the shorter work day in the forefront of their demands. Organize and control your trade and shorten your hours, is their position, and wages will take care of themselves. . . ."[2]
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> * * *
>
> "Overtime work and work on Sundays and holidays are special cases of extension of the hours of labor. The position of the labor leaders logically requires that all work outside of regular hours be abolished. This is in fact the desire of all the more progressive union men, and the desire which is almost universally expressed in the collective action of the organizations."
>
> "The stronger organizations usually secure a higher rate of pay for work outside of regular hours. The Building trades in particular get time and a half, and sometimes double time. The Lithographers and Core Makers have national rules requiring time and a half,

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[1] Bulletin No. 283, Bur. of Labor Statistics.

[2] Reports of the Industrial Commission on Labor Organizations, Labor Disputes and Arbitration, U. S. Gov't. Printing Office, 1901, Vol. XVII, pp. XLVI-XLVII.

and similar rules are enforced by the local unions in many trades. A curious illustration of the feeling against overtime is furnished by the Wood Workers. They insure their members against loss of tools by fire or accident, but they pay no loss which is incurred while the member is working on Sunday or after regular working hours." [3]

A well-known labor attorney and student of labor policy, Elias Liberman, summarizes labor's objections to overtime as follows:

"Organized labor seeks to discourage overtime. It contends that overtime shortens the period of employment; it runs counter to the 'spread-the-work' principle; it aggravates the problem of unemployment; it endangers the health of the workers, it interferes with normal living. For these reasons labor insists that overtime be restricted and be paid at a higher rate than the regular hours. Because of these limitations, the employer will make use of overtime only in cases of absolute necessity." [4]

F. T. Stockton, in his work on the Molders' Union,[5] states that "the national officers have always tried to discourage overtime because it 'takes work away from the unemployed' and because tired men cannot do good work." (p. 167)

Marion C. Cahill in *Shorter Hours*, Columbia University Press, 1932 states "Reduction of hours has been one of the two major demands of labor in the United States." (p. 11)

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[3] Ibid, pp. XLVII-XLVIII.

[4] *The Collective Labor Agreement*, Harpers and Brothers, New York, 1939, p. 155.

[5] *The International Molders' Union.*

APPENDIX B.

Full-Time Average Hours of Work Per Week Per Worker in Manufacturing.[1]

Year	Bureau of Labor Statistics (d)	National Industrial Conference Board (e)	Census of Manufactures (f)
1909	52.7		
1914	51.0	51.5	
1919	47.8		
1920	47.1	48.2	
1921	45.2	45.6	
1922	47.1	49.2	
1923	47.3	49.2	
1924	45.4	46.9	
1925	46.3	48.2	
1926	46.5	48.1	
1927	46.3	47.7	
1928	46.1	47.9	
1929	45.7	48.3	
1930	43.5	43.9	
1931	41.7	40.4	
1932	38.2	34.8	
1933	37.8	36.4	38.1
1934	34.5	34.7	
1935	36.5	37.2	36.4
1936	39.1	39.5	
1937	38.6	38.7	37.2
1938	35.5	34.2	
1939	37.6	37.6	37.0

[1] Solomon Fabricant, *Employment in Manufacturing*, 1899-1939, National Bureau of Economic Research, New York, 1942, p. 234.

APPENDIX C.

Early Union Contracts Requiring Daily Overtime Before and After Specified Clock Hours.

As early as 1876, according to Stockton,[1] the molders thought it necessary to support the ten-hour rule with a statement that the hours must be between 7 a.m. and 6 p.m. (pp. 161, 167).

The United Brotherhood of Leather Workers on Horse Goods at the turn of the century was concerned with establishing an 8-hour work day. Its views on limiting the work day were expressed by the following:

> "The rules of the union forbid members to work more than 10 hours a day. The 10 hours are to be between 7 a.m. and 6 p.m. The Brotherhood has declared itself in favor of establishing an 8-hour day at the earliest possible moment . . . "[2]

Another example of a prohibition of work at certain hours is found in the agreement between the Carpenters' Executive Council of Chicago and Vicinity and T. Nicholson and Sons Co. in 1899. "Eight (8) hours shall constitute a day's work between the hours of 8 a.m. and 5 p.m., except Saturday, when work shall cease at 12 o'clock noon."[3]

The constitution of the Lithographers' International Protective and Beneficial Association of the United States and Canada provided "that all work done outside of the hours of the agreed schedule is to be considered overtime and to be paid time and a half."[4]

The agreement between the Master Steam and Hot Water Fitters' Association of New York City and the Enterprise Association of Steam, Hot Water, Sprinkler, Hydraulic,

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[1] *The International Molders Union.*

[2] Report of the Industrial Commission on Labor Organizations, Labor Disputes and Arbitration, Vol. XVII, p. 308.

[3] Ibid., p. 384.

[4] Ibid., p. 115.

and General Pipe Fitters of New York City, made in 1900, provided:

"The working day shall consist of eight (8) hours between eight (8) o'clock a.m. and five (5) o'clock p.m. with one (1) hour for lunch, except on Saturday during the months of June, July, and August, when the time shall consist of four (4) hours between eight (8) o'clock a.m. and twelve (12) noon.

"The working day above named shall be known as regular time and shall be time actually employed at work.

"Rule No. 3

"Any work done between five (5) o'clock p.m. and eight (8) o'clock a.m., and on Sunday, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Election Day, Thanksgiving Day, Christmas Day, and the Saturday half holiday shall be paid for at double the rate of regular time . . . "[5]

A provision is included in the contract between the Hamilton County (Ohio) Carpenters' District Council and the Master Carpenters' Exchange, "That working hours shall be from eight (8) o'clock a.m. to twelve (12) o'clock m. and from one (1) o'clock p.m. to five (5) o'clock p.m. . . . "[6]

A drastic provision against working outside of specified hours was embodied in the contract entered into on May 1, 1899, between the Amalgamated Sheet Metal Workers' Protective and Benevolent Association of New York and vicinity and the Employers' Association of Roofers and Sheet Metal Workers of Greater New York and Vicinity. "All work done between the hours of 5 o'clock p.m. and 8 o'clock a.m., and Sundays, New Year's Day, Lincoln's birthday, Washington's birthday, Decoration Day, Fourth of July,

[5] Report of the Industrial Commission on the Relations and Conditions of Capital and Labor, U. S. Gov't Printing Office, 1901, Vol. VII, p. 941.

[6] Report of the Industrial Commission on Labor Organizations, etc., Vol. XVII.

Labor Day, Election Day, Thanksgiving Day, Christmas Day, shall be paid at double rates of regular time." [7]

The agreement entered into on April 1, 1899 between the Master Painters' Association of Troy, New York, and Vicinity, and local union No. 12, Brotherhood of Painters and Decorators of America, at Troy, New York, illustrates a similar attempt to penalize work at certain hours of the day. "Article 3" states: "That 8 or 9 hours shall constitute a day's work the same to be performed between 7 a.m. and 6 p.m., and that after 6 p.m. overtime must be paid." [8]

A limitation upon the hours of the day that can be worked is also found in the agreement of the Concord Granite Manufacturers' Association and the Concord branch of the Granite Cutters' National Union, for the period ending May 1, 1902. "Eight hours shall constitute a day's work, to be worked between the hours of 7 a.m. and 4 p.m. . . . ." [9]

The agreement expiring June 1, 1901, between the large breweries of St. Louis and the Brewers' and Malters' Union No. 6 at St. Louis provides: "Nine (9) consecutive hours shall constitute a day's work. With the exception of loading beer, work shall not commence before seven o'clock in the morning and last not longer than till five o'clock p.m." [10]

A contract for the year 1899 between the local lodge of electrical workers in Washington and the employers provides as follows:

> "Rule 1. The hours of labor shall be eight hours per day, to be performed between the hours of 8 a.m. and 5 p.m. for five days per week, and from 8 a.m. to 12 noon on Saturdays. Rule 2. That all work done between 12 m. and 5 p.m. on Saturdays be paid for at double the rate of wages. Rule 3. Any labor performed before 8 a.m. or after 5 p.m. shall be paid for at double the regular rate of wages." [11]

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[7] Ibid. Vol. XVII, p. 394.
[8] Ibid. Vol. XVII, p. 398.
[9] Ibid. Vol. XVII, p. 399.
[10] Ibid. Vol. XVII, p. 410.
[11] Ibid. Vol. XVII, p. 415.

APPENDIX D.

Excerpts from Publications Showing the General Understanding at that time of the Character and Purpose of Regular and Overtime Rates in the Stevedoring Industry.

According to the *New York Sun* of October 1, 1918,

> "The demands of the International Longshoremen's Association, which represents 35,000 men in the ports of New York, Boston, Norfolk, Newport News, Baltimore and Portland, are for an eight hour day at $1.00 an hour and $2.00 an hour for overtime and Sundays. They are now getting 50 cents an hour for a nine hour day, and 75 cents an hour for overtime and $1.00 an hour for Sundays and holidays."

The parties were unable to reach an agreement in 1918 and the issues in dispute were submitted to the National Adjustment Commission, a government body appointed during World War I to settle disputes involving longshore workers. Discussing the demands of the longshoremen for the following year, Dr. B. M. Squires, Secretary of the National Adjustment Commission stated, "The demands were for a basic rate of $1 on general cargo as against the existing rate of 65 cents an hour, and for an overtime rate of $2 as against $1 an hour under expiring agreements."[1]

According to the *New York Times* of September 13, 1928,

> "Yesterday the steamship committee offered to base a new contract on the old wage scale of 85 cents an hour for regular time and $1.35 an hour for overtime."

The *New York Herald-Tribune* of September 16, 1930 reported:

> "No increase was demanded in wages and the workers were content to ask for a renewal in the face of the none too prosperous condition of the industry. The sentiment was that with a forty-four-hour working

[1] B. M. Squires, "*Peace Along the Shore*," Survey, Aug. 2, 1920.

week, the present 85 cents an hour and $1.30 overtime pay was a good figure.",

and the *Journal of Commerce*, September 18, 1930:

"At this meeting it was agreed that the 1929 scale should be renewed for the year beginning October 1, with the exception of the revision of one clause. Under the agreement longshoremen receive 85 cents an hour regular time and $1.30 an hour overtime."

Similar expressions occurred in the following years.

"The present wage scale became effective on October 1 last year after the steamship employees and the union representatives had wrangled for several weeks. The men finally agreed to reduce the overtime scale from $1.30 to $1.20 an hour, but they succeeded in having the straight hourly pay of 85 cents an hour continued."[2]

"The Steamship group first offered the men a 20 per cent cut to 68 cents an hour and 96 cents for overtime, but this was quickly rejected by the workers."[3]

"The deepwater steamship companies comprising the New York Shipping Association yesterday voted to submit a new wage offer of 75 cents an hour and $1.00 an hour for overtime."[4]

"Later the companies were ready to pay the men 75 cents an hour and $1.05 for overtime."[5]

"The present agreement went into effect on October 1 last and expires at the end of this month. It calls for a forty-four hour week at the rate of 85 cents an hour straight time and $1.20 an hour for overtime. Although Mr. Ryan was non-committal it was learned from other union sources that the I. L. A. will demand $1 an hour, $1.50 overtime and a thirty-hour week."[6]

[2] New York Herald-Tribune, September 8, 1932.
[3] Ibid. September 13, 1932.
[4] Ibid. September 20, 1932.
[5] Ibid. September 24, 1932.
[6] New York Herald-Tribune, September 7, 1934.

"Mr. Ryan declined last night to announce details of the wages which men will demand, but in labor circles it was said that they would have a basis of $1 an hour for a thirty-hour week and $1.50 an hour overtime. The contract now in effect calls for 85 cents an hour for a forty-four hour week and $1.20 for overtime." [7]

". . . after extended discussion in which Mr. Ryan said the men sought a thirty-hour week to provide more employment for their fellow workers and a wage of $1 an hour and $1.50 for overtime." [8]

"Demands for an increase of 5¢ an hour regular time and 15¢ an hour overtime and a forty-hour week are to be submitted to the New York Shipping Association Monday by the International Longshoremen's Association. These demands were formulated yesterday at a meeting of the wage scale committee at 164 Eleventh Street. The present scale is 95¢ an hour regular and $1.35 an hour overtime for a forty-four hour week. The new scale will be $1 an hour regular time and $1.50 an hour overtime. The scale will apply to all workers from Portland, Me. to Hampton Roads." [9]

"Earlier in the day the North Atlantic district delegates discussed their proposal to shipowners for a reduction in hours from forty-four to forty a week and an increase in wages from 95¢ to $1 an hour, with overtime raised from $1.35 to $1.50 an hour." [10]

"The Association last week drafted demands which included increases in the hourly wage from 95 cents to $1, with $1.35 to $1.50 for overtime." [11]

"The contract which is effective Oct. 1 for one year, provides for the continuance of the forty-four hour working week, the men to receive $1 an hour for the regular week and $1.50 for overtime work. They are paid 95 cents and $1.35 an hour overtime under the agreement now in effect." [12]

[7] New York Herald-Tribune, September 8, 1934.
[8] Journal of Commerce, September 29, 1934.
[9] Journal of Commerce, September 11, 1936.
[10] Journal of Commerce, September 18, 1936.
[11] New York Times, September 18, 1936.
[12] New York Times, September 19, 1936.

APPENDIX E.

Excerpts from Testimony of Union Representatives Before the National Longshoremen's Board in 1934 Urging Establishment of the Six-Hour Day.

At the hearing before the National Longshoremen's Board, Mr. Melnikow, representing the International Longshoremen's Association, testified:[1]

"Q. [Mr. Cushing] What do you mean by your thirty-hour average per week?

"A. [Mr. Melnikow] The issues as defined contain a proposal that the maximum hours of labor be limited to thirty hours per week averaged over a period of I believe it is four weeks."

"That is to say, a man might exceed thirty hours in one or two weeks, or in three weeks, but at the end of the fourth week his average would be thirty hours per week. In other words, you might well put it this way: a maximum limit of 120 hours contained in a four-week period. These 120 hours might under that ruling conceivably be put in one week, but we hope it will not be.

"Q. [Mr. McGrady] I suppose that means that in case of a rush and of something unusual occurring in a week, the men can work as long as necessary, providing that the end of the four weeks it will average up.

"A. That is right. Wherever possible the man would like to see the shifts limited to a reasonable maximum, naturally. That is provided for, as it has been from time immemorial, by overtime rates after the normal shift has been exceeded. They are not going to insist on any maximum shift per week. If it is necessary for the men because of a rush of work to work longer than 30 hours a week the men have no objection. They feel, though, that in the long run an equitable distribution should be worked out so that over a four-week period the 30-hour week should be the maximum. Let me put it this way: After a man

[1] Transcript of Proceedings before the National Longshoremen's Board, 1934, Vol. 8, pp. 398-399.

has worked 120 hours during a four-week period the men feel that he should be permitted to rest, and let another man work in his place, so as to distribute the work as evenly as possible."

• • •

"Q.[2] [Mr. Cushing] Now, in order that I may understand your six-hour proposal, is it your idea that in this proposal there should be men available enough in the industry to replace any man after he shall have worked six hours?

"A. [Mr. Melnikow] Yes, I think that the I. L. A. is willing to do its utmost to give the employers the number of men required at all times.

"Q. I am not referring to the ILA. I am referring to the question as to whether or not the six-hour rate and the overtime after six hours is designed to increase the wages or to prevent the working of men in excess of six hours.

"A. It is the desire of the I. L. A. to encourage the use of fresh men after men have put in six hours whenever and wherever possible. As I have stated, I believe the I. L. A. will undertake and is in a position to furnish the men to take the place of those who have worked the six hours.

• • •

"Q. [Mr. Petersen] Is it not a fact that owing to the fact that there were too many men on the waterfront, and we speak specifically of San Francisco, as shown by the Employers' own figures who claim there are too many men, that the only way in which you could put a spread of work program in was through a limitation of the hours?

"A. [Mr. Melnikow] I think that is almost mathematically true."

Mr. J. Singer, also representing the International Longshoremen's Association, further testified at the hearings in Portland:

"Q.[3] [Mr. McCulloch] On the question of the 6 hour day and the 30 hour week, I understood you to advocate

[2] Ibid., pp. 422-423.

[3] Ibid., Vol. 15, pp. 22-23.

that in the interest of spreading employment as widely as possible?

"A. [Mr. Singer] That is it.

"Q. Will you explain why, at the same time, you advocate the payment of time and half for overtime? In other words, to the extent that overtime is engaged, is not the opportunity for spreading employment cut down?

"A. As far as the overtime is concerned, I always figure the reason that there is a penalty put on overtime is to keep away from the overtime proposition. That is why all trade labor movements have asked for a penalty on overtime, in order to keep the boss from requiring you to work overtime. As far as I am concerned, I would rather not work overtime."

* * *

"Q.[4] [Mr. McCulloch] As I understand it, then, the employees have no real objection to the 8-hour day except that it does not spread the work far enough or among enough men?

"A. [Mr. Singer] That is just the reason why we are asking for the 6-hour day. We are objecting to the 8-hour day because there is not enough work to go around.

"Q. That is what I understood and that is why you advocate the reduction from 8 hours to 6 hours?

"A. Surely. It is not to get the overtime."

[4] Ibid., Vol. 15, p. 24.